

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARK A. ROARK,

Plaintiff,

-v-

5:23-CV-1237

THE PEOPLE OF THE
STATE OF NEW YORK *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

MARK A. ROARK
Plaintiff, Pro Se
23-R-2152
Ulster Correctional Facility
P.O. Box 800
Berme Road
Napanoch, NY 12458

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On September 29, 2023, *pro se* plaintiff Mark A. Roark (“plaintiff”), who is currently incarcerated at Ulster Correctional Facility, initially filed this civil action in the U.S. District Court for the Western District of New York. Dkt. No. 1. Along with his complaint, plaintiff sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2. But the case was transferred to

this judicial district because it involved events that occurred in Watertown, New York, which is located in Jefferson County. Dkt. Nos. 3, 4.

On December 21, 2023, U.S. Magistrate Judge Miroslav Lovric granted plaintiff's IFP Application and advised by Report & Recommendation ("R&R") that plaintiff's complaint be dismissed with leave to replead some claims but not others. Dkt. No. 5. As Judge Lovric explained, plaintiff's claims for money damages against the State of New York or the Watertown District Attorney's Office (or one of its named employee for actions taken in the course of her official duties) were barred by Eleventh Amendment immunity. *Id.* So Judge Lovric recommended that those claims be dismissed for lack of subject matter jurisdiction. *Id.* But Judge Lovric concluded that plaintiff might be able to plead one or more actionable claims for relief against defendant Watertown Police Department and/or defendant Samaritan Hospital. *Id.*

Plaintiff has not filed objections, and the time period in which to do so has expired. *See* Dkt. No. 5. Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 5) is ACCEPTED;
2. Plaintiff's complaint (Dkt. No. 1) is DISMISSED;

3. Plaintiff's claims against defendants The People of the State of New York and Watertown District Attorney's Office are DISMISSED without prejudice but without leave to amend for lack of subject matter jurisdiction;

4. Plaintiff's claims against defendants Watertown Police Department and Samaritan Hospital are DISMISSED with leave to amend;

5. Plaintiff shall have THIRTY DAYS in which to submit an amended complaint in accordance with the instructions set forth in Judge Lovric's R&R;

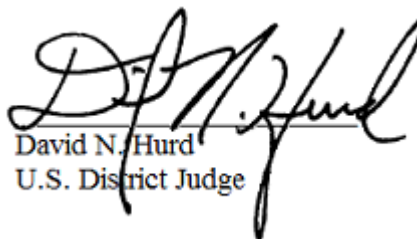
6. If plaintiff timely files an amended complaint, this matter shall be referred to Judge Lovric for further review or other action as appropriate; and

7. If plaintiff does not timely file an amended complaint, the Clerk of the Court is directed to close this matter without further Order of the Court.

The Clerk of the Court is directed to terminate the pending motion and set deadlines accordingly.

IT IS SO ORDERED.

Dated: January 11, 2024
Utica, New York.


David N. Hurd
U.S. District Judge